GRANTED

No. 99-936

Supreme Court, U.S.
FILED
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CLERK

In the

Supreme Court of the United States

CRYSTAL M. FERGUSON, *et al.*,

Petitioners,

v.

THE CITY OF CHARLESTON, SOUTH CAROLINA, *et al.*,

Respondents.

On Petition for A Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit

Memorandum in Opposition to Motion for Leave To File Brief as *Amici Curiae*

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There is currently pending before the Court a petition for a writ of certiorari brought by ten women who are seeking relief under Section 1983 for alleged violations of their Fourth Amendment rights in connection with urine drug screens conducted by the MUSC Medical Center during treatment of their pregnancy. The Petitioners, all of whom tested positive for cocaine use during various stages of their pregnancies, contend that the Court of Appeals for the Fourth Circuit erred in finding the searches reasonable under the special needs doctrine as enunciated by this Court.

A group of physicians, nurses, counselors, and public health practitioners and their professional associations move for leave to file a brief as *amici curiae* in support of the petition for a writ of certiorari. The Petitioners refused to consent and oppose the motion to file a brief as *amici curiae* because it does not bring to the attention of the Court any new relevant matter that could provide any additional help to the Court. Sup. Ct. R. 37.

The Petitioners are ably represented by a number of counsel, including attorneys for the Women's Law Project and the Center for Reproductive Law & Policy, who have already filed a comprehensive petition which covers all the relevant issues. The *amici curiae* brief will only burden the Court with issues and arguments not relevant to the issue at hand and its filing should be denied.

The *Amici* purport to be experts in the areas of physician-patient relationship, the need to maintain the confidentiality of personal medical information, maternal and neonatal health, and the treatment and prevention of substance abuse among pregnant and parenting women. They claim to offer insight of basic medical misunderstandings that "infected" the Court of Appeals decision and alert the Court to the harms, which will be inflicted, if the decision is allowed to stand.

While the *Amici* may be experts in their fields, this case was tried for six-weeks during which time many experts in their fields testified. The record created at trial is the only relevant base of information for consideration by the Court.

The *Amici* claim that there is a lack of support for the finding that maternal cocaine use poses serious dangers to children. Relying on new medical research, unavailable at the time of the Policy was developed and implemented, they argue that there was no crisis. This new information, not available or not presented at trial, is not relevant to consideration of whether the Respondents had a reasonable belief, based on the documented studies available at the time, that there was an epidemic of prenatal cocaine abuse posing serious dangers to maternal and infant health.

The *Amici* contend that the Court of Appeals failed to consider the Policy's effect of deterring women from seeking prenatal care. However, this point was addressed at trial and evidence established that there was no adverse effect.

A dominant focus of the *A*mici's brief is the issue of physician-patient confidentiality – an issue that is not even before the Court. The Petitioners never asserted state common-law claims for breach of the physician-patient confidentiality. And, while they did assert a constitutional claim for violation of their right to privacy under the Fourteenth Amendment, that claim was resolved by the District Court and the Court of Appeals in favor of the Defendants and the Petitioners do not seek review on that issue. Thus, the *Amici*'s purported expertise and focus on this issue are irrelevant.

Finally, the body of law on the special needs doctrine, its application in this case, and the purported dangers of the Court of Appeals' decision have all been adequately addressed by

the able counsel for the Petitioners. The *Amici* repetition of the same arguments brings nothing new to the dialogue.

CONCLUSION

The motion for leave to file brief as *Amici Curiae* should be denied.

Respectfully submitted,

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Date: January 10, 2000

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 11th day of January, 2000, I served the foregoing Memorandum in Opposition to Motion for Leave to File Brief as Amici Curiae on the following by mailing them first-class postage prepaid, addressed as follows by U.S. Mail:

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